IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

MFA.No. 13 of 2007(B)

EP.262/2005 of ADDL.DISTRICT COURT, THRISSUR

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APPELLANT: PETITIONER

K.K.SUMANGALA TEACHER,
W/O.KURIYAKOTTU VISWAMBHARAN,
PUZHAKKAL VILLAGE DESOM, THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

USHA TEACHER,
W/O.JANARDHANAN, PULYOTH HOUSE,
PURANATTUKARA P.O., THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.(Panchayat Raj Act) No. 13 of 2007

Dated this the 14th June, 2007.

J U D G M E N T

A defeated candidate who made an unsuccessful attempt to unseat the returned candidate is the appellant. His Election Petition was rejected, not at the threshold, but after the commencement trial, on the ground of maintainability.

2. The appellant and the respondent were candidates for the election to the Local Bodies held on 24.9.2005. They contested from No.10 of Muthuvara Division of Puzhakkal Block Panchayat. The respondent was declared elected. Appellant filed Election Petition No.262/2005, before the District Court, Thrissur, for a declaration that the election of the respondent is void, on the ground that the result of the election was materially affected by improper counting of votes, improper tabulation, and other material irregularities. It was alleged that there was violation of the provisions of the Kerala Panchayath Raj Act, 1994, (for short 'the Act') and the Kerala Panchayat Raj (Conduct of Election) Rules, 1995, (for short 'the Rules). There was also a prayer to declare the appellant as elected.

3. In paragraph 6 of the Original Petition, it was averred, that the counting of votes was held on 27.9.2005, at Sree Sarada Girls Higher Secondary School at Puranattukara. The details of the persons and places where the counting of votes held was also stated.

4. In paragraph 7 of the Election Petition, the appellant had given the procedures followed by the returning officer in counting of votes. It was averred that votes received by each candidate were bundled into bundles of 50 ballot papers. The votes obtained by each candidate from each ward were entered in the tabulation sheet, at the table of the Returning Officer. At the end of such tabulation, petitioner secured 3487 votes and the respondent secured 3440 votes. According to the petitioner, she won by a majority of 47 votes. The petitioner had also given the details of votes polled in favour of herself, first respondent, ballots declared invalid, and the total votes. The number of postal ballots were also given. It was averred that the Returning Officer ought to have recorded the details of counting of ballot papers in Part II of Form No.24 and in the result sheet in Form No.25, and announced the particulars thereof under Rules 48 and 51 of the Kerala Panchayat Raj (Conduct of Election) Rules, in short 'the

Rules'. The tabulation was completed at 7 p.m. on 27.9.2005. Petitioner approached the Returning Officer for declaration of results. But the Returning Officer delayed the same. At about 3 p.m. on 28.9.2005, the petitioner again approached the Returning Officer for a certificate, but he did not issue the certificate. It was also averred that as the petitioner was tired due to campaigning, she waited in a class room nearby, and slept for some time. At about 4.30 a.m., she went to the table of the Returning Officer for results. She was informed that the results were announced and the respondent declared elected, by a margin of 53 votes. According to the petitioner, the results were tampered with by the Returning Officer and officials under him.

5. It was averred that tampering took place with respect to the result in Ward Nos.10/1 and 10/2. It was averred in the Original Petition that the petitioner secured 467 votes and respondent secured 462 votes. There were 25 invalid votes in Ward No.10. Instead of showing that result, it was written as follows, "Ward No.10/1, petitioner-219 votes, respondent-241 votes, invalid votes-14 and total-474 votes, and in Ward No.10/2, petitioner-330 votes, respondent-257 votes, invalid votes-16, and total-603 votes". The details were given as a tabular form in the Original Petition itself. It

was averred that entry in the result sheet was incorrect, since the total number of ballot papers issued Ward No.10/1 was only 351, as per the Ballot Paper Account issued in Form No.24 under Rule 41 of the Rules. When only 351 ballot papers were issued in Ward No.10/1, in the result sheet, the total votes polled was shown as 474. There is a difference of 123 ballot papers between the number of ballot papers issued and number of votes polled.

6. The respondent filed a counter denying the averments contained in the Election Petition. The case came up for evidence before the court below on 18.2.2006. On that day, petitioner and witnesses were present. The respondent filed I.A.421/06 seeking permission to peruse certain documents produced along with I.A.No.2754/2005. The case was adjourned to 20.2.2006 along with the petition filed by the respondent. The case was again adjourned to 1.3.2006. On that day, the counsel for the respondent examined the records and documents available in the Court, though no order is seen passed in I.A.421/06. The case was adjourned to 7.3.2006. On that date, the appellant was examined in part. When a document was sought to be marked through PW.1, objection was raised and the case was adjourned to next day. On that day, examination in chief of PW.1

was completed and Exts. A6 to A24(b) were proved and marked. Subsequently, PW.1 was cross examined. One more witness was examined as PW.2. The case was adjourned to 16.3.2006. In the meanwhile, the respondent filed I.A.593/2006 praying that the maintainability of the election petition maybe decided as a preliminary point. Subsequently, counsel for the respondent produced a copy of the judgment of this Court, dated 1.6.2006, in W.P.(C) 14286/2006. This Court directed the court below to decide the question as to whether the preliminary issue sought to be raised, required to be considered and decided as a preliminary point. The learned District Judge adjourned the case for hearing maintainability. After a number of adjournments, finally by impugned order, dated 25.9.2006, the learned District Judge held that the Election Petition is not maintainable, and dismissed the same. Challenging that judgment, this appeal is filed.

7. The learned counsel appearing for the appellant-petitioner, has argued that court below did not peruse the pleadings and the documents. It is argued that reasons given by court below for non-suiting the petitioner are illegal and unsustainable.

8. The learned counsel appearing for the respondent has argued that in an election trial, there is no question of showing any sympathy to any of the parties, and the procedure laid down by law has to be strictly followed. It is further argued that copy of the election petition served on respondent was an incomplete one, and hence an incorrect copy. It is argued that serving an incorrect copy of the election petition alone is a ground to dismiss the Election Petition. It is also argued that copies of the documents were not served on the respondent.

9. In paragraph 2 of the affidavit filed in support of the petition filed for dismissing the writ petition, it was averred that the Election Petition was filed not in accordance with the provisions of the Kerala Panchayat Raj Act. In para 3, it was averred that appellant produced 11 documents along with a list of documents. It is admitted that this fact came to the notice of the respondent only on 1.3.2006, when her counsel perused records and documents of the case from the court. It was also averred that those documents and list of documents form part of the petition, but the same was not served on her through the process server of the court below. The copies or documents produced are not in accordance with Section 89(2) of the

Act, the certificate of the appellant-petitioner to the effect that documents are true copies was a false attestation. The copies of documents are not true copies of the originals produced. It was also averred that such a trick was played only to mislead the respondent, and hence, prayed for a dismissal of the petition.

10. The learned District Judge relying on Ext.A2, list of documents, found that list of documents served on the respondent is not a copy of the list of documents produced before the court. It was also found that as per the list of documents filed in the Court, there were only 11 documents, but appellant had produced 12 documents, as seen from Ext.A2 documents list. It was also held that the copy of the Original Petition served on the respondent was an incorrect and incomplete one, and dismissed the Original Petition.

11. I shall now deal with the first contention. The court below failed to note that Ext.A2 could not be a true copy of the list of documents produced by the appellant, because Ext.A2 is an original list of documents filed by the respondent. It is hand written in Malayalam and signed by the counsel appearing for the respondent. The list of documents filed by the appellant is computer typed and in English. The learned District Judge did not even bother to verify

whether Ext.A2 could be a copy of the list of documents filed by the appellant. The list of documents produced by one party can never be the true copy of list of documents produced by the opposite side. It is to be noted that in the affidavit filed in support of the petition filed for considering the maintainability, the respondent had categorically admitted that the respondent had received a copy of the list of documents produced by the appellant. But that copy was not produced for verification of the court, to find out whether that document is a true copy of the original list of documents. So, the court below made a mistake of comparing the list of documents produced by appellant with the list of document produced by the respondent, and came to a strange conclusion that appellant served a wrong copy of list of documents on the respondent.

12. Now, I shall deal with the second contention. I have called for the original records and perused the same. It is seen that one list of document was stitched to the Original Petition, and numbered as page 7. It contains the details of 11 documents. The list of documents contains verification in original by the appellant. It is seen that the appellant had filed another computer print of the very list of documents stitched to the Original Petition. That list of

documents also contain all the details of 11 documents given in the other list of documents stitched with the Original Petition. The list of documents produced separately also contains verification in original. So, there were two identical original list of documents produced before the court, one stitched with the Original Petition, and another one separately. Both list of documents reads as follows:-

"LIST OF DOCUMENTS

Sl. No.	Description of the document	Date	Purpose of production
1	Ballot paper account of Booth No.1	24.9.2005	To prove the total number of ballot papers issued in Booth No.10-1
2	Ballot paper account of Booth No.10-2	24.9.2005	To prove the total number of ballot papers issued in Booth No.10-2.
3	Result sheet of No.10 Muthuvara Constituency in 86 Puzhakkal Block Panchayat	27.9.2005	To prove the case.
4	Mathrubhumi Daily	30.9.2005	To prove the news item in page No.2 showing the petitioner as the returned candidate.

Sl. No.	Description of the document	Date	Purpose of production
5	Copy of the representation submitted by the petitioner before the Kerala State Election Commission with copy to the Returning Officer	28.9.2005	To prove the case.
6	The postal receipt issued while issuing document No.5 to the Election Commission	28.9.2005	To prove the case.
7	The postal receipt issued while issuing document No.5 to the Returning Officer	28.9.2005	To prove the case.
8	Ballot paper account of Booth No.10-1 for polling to Adat Grama Panchayat	Nil	To prove the total number of ballot papers issued in Booth No.10-1
9	Ballot paper account of Booth No.10-2 for polling to Adat Grama Panchayat	Nil	To prove the total number of ballot papers issued in Booth No.10-2.
10	Ballot paper account of Booth No.10-1 for polling to Thrissur District Panchayath	Nil	To prove the total number of ballot papers issued in Booth No.10-1
11	Ballot paper account of Booth No.10-2 for polling to Thrissur District Panchayath	Nil	To prove the total number of ballot papers issued in Booth No.10-2

VERIFICATION

I, K.K.Sumangala Teacher, the petitioner in the above petition do hereby verify and declare that all what are stated above in paragraphs 1 to 20 of the petition are true and correct to the best of my knowledge, belief and information and that all what are stated above in

Paragraphs 1 to 20 are believe to be true on information received and that I have not concealed or suppressed any material facts.

Sd/-

PETITIONER: K.K.Sumangala Teacher"

13. The respondent had raised a contention that she was not served with a copy of the affidavit filed by the appellant along with the original petition. To prove that fact, she produced that copy of the affidavit, which she had received from the court subsequently, along with the list of documents filed by her. That was the 12th document referred to in Ext.A2 list of documents. In fact, that was not a document produced by the appellant as per the list of documents at all, but that was a copy of the affidavit filed by the petitioner along with the Original Petition. The court below did not even bother to verify what exactly is the additional 12th document before finding fault with the appellant for giving more copies of documents to the respondent, so as to confuse her. The reasoning of the court below that though 11 documents were produced along with the Original Petition, the respondent was served with copies of 12 documents, is also against the materials on record. So, that ground is also unsustainable.

14. Now, I deal with the main ground raised by the petitioner. According to the respondent, the copy of the petition served on her was incomplete and incorrect. To prove that fact, the respondent produced a copy of the original petition stated to have been received by her, from the court. It was served on her by the process server of the court. In the affidavit filed in support of the petition to dismiss the Original Petition as not maintainable, there was no averment that the copy of the Election Petition served on her was an incomplete or an incorrect one. No such contention was raised in the objection filed in the Original Petition also. It is very pertinent to note that the respondent and her counsel perused the Original Petition and the records produced along with it. In para 3 of the affidavit filed in support of the petition to consider the question of maintainability, it was averred as follows:-

So, that petition was filed after perusing the records of the Court. It is very difficult to believe that the fact that copy of the petition served on the respondent was an incomplete one escaped the attention of the respondent and her counsel, at the time of perusal of the records of the court. Normally, one would expect the respondent to raise that

objection, but such an objection was not raised. On the other hand, the contention raised was that verification contained in the Original Petition and copies were not in accordance with Section 89(2) of the Act. The respondent had stated the details of other objections.

15. The objection that Ext.A1 was an incomplete document was raised at the time of cross examination of PW.1. During cross examination, a question was put to PW.1 to the effect that though the Original Petition filed in the court contains 7 pages, the copy of the same served on the respondent is only having six pages. According to the respondent, this was done with a mala fide intention of confusing her. I have already extracted the case put forward by the appellant in the Original Petition. Her specific case was that tampering was done in the tabulation sheet pertaining to Ward Nos.10/1 & 10/2. It was very specifically averred that there were only 351 votes polled, but as per the result sheet, the total number of votes polled was 474. I have already extracted the details of documents produced along with the Original Petition. Six of them are ballot paper accounts pertaining to Ward Nos.10/1 & 10/2, third one relates to result sheet, and then a Mathrubhumi daily, copy of the representation filed by the petitioner-appellant, and the postal receipts

in support of the contention that copy of representation was sent to the Election Commissioner, as well as the Returning Officer. So, a perusal of the list of documents would show that these are evidence to be adduced in this case and not part and parcel of the Original Petition.

16. Election Petition has got only six pages. It contains 20 paragraphs. On the foot of the 20th paragraph, there is a verification. It is true that there is no reference to any of the documents produced in the pleadings, but virtually the contents of those documents are extracted in the pleadings. So, Ext.A1 copy is complete, so far as the pleading of the Election Petition. Seventh page is only a list of documents, which contains a separate verification. As I have already stated, the appellant had produced two original lists of documents with original verification separately. Eleven documents were produced along with the list of documents. It is true that one list of documents is stitched with the Original Petition. But merely because two Original list of documents were filed and one of them was stitched with Election Petition, will not make it an integral part of the

Election Petition. By no stretch of imagination that list of documents which was stitched with Original Petition can be considered as a part of the Election Petition.

17. The counsel for the respondent has argued that so far as the copies are concerned, court seal will be affixed in the docket sheet alone, whereas, in an Original document, the court seal will be affixed on the reverse side of all pages. It is argued that the copy of Ext.A1 served on the respondent is having only six sheets and the 7th sheet is missing, and hence, an incomplete one. It is true that on the right hand side of page 6, the court seal is seen affixed. It is very interesting to note that on the left hand side of the same sheet also, there is a court seal affixed without any date. The seal on the right hand side contains two dates, 19.10.2005 & 6.3.2006. It is argued by the counsel for the respondent that the date, 6.3.2006, is only a mistake and that ought to have been written over the undated seal, on the left hand side of the sheet. Exts.A2 (c) & (d) are copies of documents produced by the appellant. Subsequently those documents were produced by the respondent as originals. So, those documents are copies so far as the appellant and original so far s the respondent is concerned. Ext.A2(c) contains dated seals on the first page and last

page, and also undated seals on the reverse of all pages. But in Ext.A2(d) and Ext.A2(k), no seal is seen affixed on the reverse side of all pages. So, it is not possible to draw any inference by perusing Ext.A2 series alone. No Officer of the Court was examined as to prove what is the procedure followed while receiving the originals and copies of those documents. A perusal of Ext.A2 series documents would show that the office is not following any regular procedure. If, as a matter of fact, there is a practice of affixing dated seal on the reverse side of all original documents, why no such seal was affixed in Exts.A1, A2(d) and A2(k) ?

18.The respondent has got a case that the copy produced to be served on the respondent has got only six pages. Much reliance is placed on the admission of PW.1 in the box to argue that the copy of the petition served on the respondent was an incomplete one. It is very pertinent to note that PW.1 was examined in part on 7.3.2006 and Exts.A1 to A5(a) marked and admitted in evidence. On that day, the counsel for the respondent raised an objection that the respondent did not receive the copies of the document. It is very pertinent to note that the court permitted the respondent to peruse the court records on 1.3.2006. But the

respondent did not inform the fact that she was not served with the copies of the documents before the examination of witnesses started. The chief examination of PW.1 continued on 8.3.2006 also. Exts.A6 to A22(b) were marked on that day and admitted in evidence without any objection.

19. It is true that PW.1 had deposed during cross examination that she had written the detailed verification on the sixth page of Annexure-A1, because it is the last page. But the evidence of witness is to be read as whole. The definite case of PW.1 was that when she produced the copy of the Original Petition, a copy of the witness list was also attached to it. She further deposed, on the sixth page of the copy, she had written that this is the true copy of the petition as it was the last page of the petition, and on the 7th page, she had written that the same is the true copy of the list of document. So, there is no admission made by PW.1. Annexure A1 had only six pages when she produced the same in court. PW.1 is not competent to speak about the procedure followed by the office of the court. It is very very pertinent to note that in spite of the fact, the petition to consider maintainability as preliminary point was filed, after inspecting records of the court, there is no averment in the petition that copy of

the Election Petition served on her was an incomplete one. She did not go to box and gave oral evidence. She did not even file an affidavit stating that Annexure-A1 had only six sheets, when she received from the court. Her attempt is to take advantage of the certain answers given by the appellant during cross examination. In fact the appellant was totally unprepared to give answers to such questions put to her by an experienced Advocate during cross examination. So, it was appellant who was taken by surprise. The chance of the respondent herself detecting the 7th page and trying to make out a case that it is an incomplete document, cannot be ruled out in this case. So, it is not possible to come to a conclusion that PW.1 produced the copy of Election Petition after removing the last page to make an incompletion.

20. The learned counsel appearing for the respondent relied on the decision reported in **Kaveri Amma v. Devaki** (1996 (2) KLT 189), wherein it was held that if an Election Petition is filed in violation of the form prescribed by the Act, that cannot be allowed to be withdrawn to enable the petitioner to file a proper petition in conformity with Section 89(2) of the Act. It was also held that if the Election Petition is not in conformity with the form, it should be dismissed without going into the merits of the petition. There cannot

be any dispute regarding the principles laid down in Kaveri Amma's case (supra). But the question arising for consideration is how far that principles are applicable to the facts of the case at hand.

21. The appellant was examined in part on 7.3.2006. While the counsel for the appellant attempted to mark the 3rd document in the document list through PW.1, an objection was raised by the respondent's counsel to the effect that copies of the documents were not given to the respondent. The court examined the court records and found that the copies of documents produced by the petitioner to be served on the respondent were with the court records. Copies of 11 documents and copy of affidavit filed by the appellant were received by the counsel for the respondent from the court. In Ext.C1 memo, the counsel for the respondent made the following endorsement.

> "These documents were confronted by the counsel for the petitioner while PW.1 was in the box today. The defence counsel objected on the ground that there was no notice of having produced these documents, and that copies of these documents were not furnished to the respondent. The petitioner's counsel asserted that these documents were produced along with the petition. The court examined the court records and found that copies of these documents produced by the petitioner for being served on the respondent

> were lying with the court records. As directed by the court, copies of 11 documents and affidavit filed along with the petition are received by me from court. "

In the affidavit filed in support of the petition also, it was admitted that the copy of list of document and documents were produced by the appellant and available among the records. The dated seal in the documents also prove that the copies intented to be served on the respondent were produced along with the Originals. So, the material on record shows that 11 documents were produced along with original list of documents, which contain verification by the appellant. Copy of the list of documents and copies of the documents to be served on the respondent were also produced. The office of the court did not serve the copies of the affidavit, list of document and documents filed along with the Original Petition on the respondent. That is borne out from the records itself. There was no slackness or negligence or default on the part of the appellant in not serving the copies on the respondent. The litigant can have no control regarding the functioning of the office of the court. Once the litigant produces the documents with copies, it is the duty of the court to serve copies of the petition and documents etc. on the respondent. The parties cannot be asked to go to Court every day and verify whether the staff attached to the court are

discharging their duties correctly. It is a mistake committed by the court, and not by the appellant. A litigant cannot be penalised for a mistake committed by the Court. In such a case, the court ought to have stopped the trial and adjourned the case for a reasonable time, after serving the copies of the same, on the respondent.

22. Section 93 of the Act provides that the Court shall dismiss an Election Petition which does not comply with the provisions of Sections 89 or 90 of the Act. According to the respondent, The Election Petition is defective because it is not in conformity with the provisions contained in Section 89(2) of the Act. Section 89(2) of the Act reads as follows:-

> "**89. Presentation of petitions:-** (1) An election petition calling in question any election may be presented on one or more of the grounds specified in Section 102 and Section 103, to the appropriate Court as specified in Section 88, by any candidate at such election or by any elector within thirty days from, but not earlier than, the date on which the returned candidate was declared elected.
>
> Explanation- In this sub-section "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

> (2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition." (emphasis supplied)

A reading of Section 89(2) of the Act makes it clear that duty cast upon the petitioner is to produce the true copies of the petitions and documents. No duty is cast upon the petitioner to serve the copies on the respondent. If such a view is taken, it will lead to disastrous consequences. An unscrupulous respondent will be in a position to get the Election Petition dismissed at the threshold. All that he has to do is to exert influence on the clerk or serving officer of the court not to serve copies of the petition or documents produced by the petitioner. So long as the statute does not cast a duty on the petitioner to serve the copies of the petition and documents, an Election Petition cannot be dismissed on the ground that there is failure on the part of the office to serve the copies of all petition and documents on the respondent.

23. The learned counsel appearing for the respondent also relied on **Rajendra Singh v. Usha Rani and others** (AIR 1984 SC 956), to argue that the Act does not contemplate filing of incorrect copies, and by filing incorrect copies, petitioner takes the risk of

getting the Election Petition dismissed as in limine. In Rajendra Singh's case (supra), the petitioner produced 23 copies of the petition. Ten copies were corrected and duly signed by the petitioner and rest were with the counsel with instruction to get them corrected. The Apex Court held that if an Election Petitioner files a number of copies, some may be correct and some incorrect, and it is his duty to see that a correct copy is served on the respondent. It was held that no duty is cast on the office of the court to search out the correct copy and serve the same on the respondent. The position is different in case at hand. In this case, the appellant produced the copies, but the same was not served on the respondent, on account of mistake committed by the court.

24. The learned counsel appearing for the respondent has argued that the duty of a petitioner does not end by producing the copies in the Court. It is his duty to see that the true copies of the petition and documents are served on the respondent. It is argued that even if there is omission on the part of the office to despatch the copies to the respondent, the Election Petition is not maintainable. He relied on **Dr.(Smt) Shipra v. Shanti Lal Khoiwal** (AIR 1996 SC, 1691). In paragraph 12 of the decision, it was held as follows:-

> "12. The contention that the election petition cannot be dismissed under Section 86 at the threshold on account of the omission on the part of the Registry of the High Court to point out the same as per its procedure cannot be countenanced. Lapse on the part of the Registry is not an insurance to deny to the returned candidate the plea that the attestation of the affidavit and its certification to be a true copy is an integral part of the pleadings in the election petition."

It is argued by the counsel for the respondent that in the trial of an Election Petition, the concept of substantial compliance with statutory provision cannot be applied.

25. In Smt.Shipra's case, supra, the unsuccessful candidate filed an Election Petition. The petitioner therein produced copies of the Election Petition. The copies were not true copies. The respondent raised a contention that the copies served on him was an incorrect copy. It was contented that the Registry of the High Court ought to have noted the defect and ought to have returned the same for curing defects. The Apex Court rejected that contention and held that the lapse on the part of the Registry is not an insurance to deny the returned candidate, the plea of attestation. In this case, the respondent has no such case. So, the principle laid down in Smt.Shipra's case can have no application in the facts of this case. No

statutory duty is cast upon the petitioner to see that the copies of all petitions, affidavits, documents, etc. are actually served on the respondent. That is the duty of the court.

26. In **Harischandra v. S.K.Mohammed & Others** (1996 (1) K.L.J.591), a learned Judge of this Court has taken a view that the mere fact that a document or paper is annexed to the petition, would not necessarily make it an integral part of the petition. In this case, two original list of documents were produced, one stitched along with the Original Petition, and the another one separately. Contents of both these list of documents are identical.

27. The verification of Annexure-A1 with the original will show that it is a true copy of the Original Petition. It is true that an extra copy of list of document is not seen stitched with Annexure-A1. But the copy of list of documents was produced separately also. Even accepting the case of the respondent that a copy of the same was not stitched with copy of the Election Petition served on her, it is not possible to accept her contention that the copy served on her was an incorrect one. It was complete. So, the finding of the court below that the copy of Election Petition served on the respondent was

incomplete and incorrect, and hence, is illegal. The dismissal of the Original Petition on the ground that it was defective is unsustainable and liable to be set aside.

27. In the result, M.F.A. is allowed. The finding of the court below that the petition is not maintainable is set aside. I hold that the Election Petition is maintainable. The learned I Additional District Judge, Thrissur, is directed to take the Election Petition No.262/2005, back to file, and dispose of the same afresh, in accordance with law, after giving both sides, an opportunity to adduce further evidence, if so adviced, as expeditiously as possible.

The parties shall appear before the court below on 6.8.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.